

APPENDIX F

Current Non-Zoning Wetlands By-Law

1. Purpose and Jurisdiction

- 1.1. The purpose of this Bylaw is to protect the wetland and water resources of the Town of Shirley by regulating activity in or near wetland resource areas. Conditions shall be imposed by the Shirley Conservation Commission (the Commission) after a public hearing at which the Commission determines that the area on which the proposed work is to be done is significant to public or private water supply, to ground water supply, to flood control, to storm damage prevention, to prevention of pollution, to protection of land containing shellfish, to the protection of wildlife habitat or the protection of fisheries (collectively, the Interests Protected by this Bylaw) .
- 1.2. Except as permitted by the Shirley Conservation Commission or as provided in this Bylaw, no person shall remove, fill, dredge, or alter any bank, fresh water wetland, marsh, meadow, bog, or swamp bordering any creek, river, stream, pond, or lake, or land under said waters or any land subject to flooding (collectively, the "Areas Subject to Protection").
- 1.3. Any activity proposed or undertaken within the "Buffer Zone" as defined in Massachusetts General Laws Ch. 131 Sec. 40 and the Wetlands Protection Act Regulations 310 CMR 10.00 or Areas Subject to Protection which, in the judgment of the Commission, will remove, fill, dredge or alter an Area Subject to Protection under this Bylaw is subject to regulation under the Bylaw and requires the filing of a Request for Determination (Request) or Notice of Intent (Notice).
- 1.4. Any activity proposed or undertaken outside the Areas Subject to Protection and outside the Buffer Zone is not subject to regulation under this Bylaw and does not require the filing of a Notice of Intent unless and until that activity actually alters an Area Subject to Protection under this Bylaw. In the event that such activity has in fact altered an Area Subject to Protection under this Bylaw, the Commission shall impose such conditions on the activity or any portion thereof as it deems necessary to contribute to the interests protected under this Bylaw.
- 1.5. It is not the purpose or intention of this Bylaw to exceed the requirements of Mass. Gen. Laws Ch. 131 Sec. 40 as defined on January 1, 1994, or the Wetlands Protection Act Regulations 310 CMR 10.00 as defined on January 1, 1994, except in the following Bylaw Sections: 2 and 10. (deleted)

2. Applications and Fees

- 2.1. Any person who proposes to do work which will remove, fill, dredge or alter any Area Subject to- Protection under this Bylaw shall submit a Notice of Intent to the Commission which bears the signature of the applicant for work on the subject property. Application under this Bylaw may be identical in form to the Notice of Intent filed pursuant to Mass. Gen. Laws Ch. 131, Sec. 40, and shall be sent by certified mail or hand delivered to the Shirley Conservation Commission. Said application shall be accompanied by a filing fee specified within the regulations of the Commission. This fee is in addition to that required by the Wetlands Protection Act, Mass. Gen. Laws Ch. 131, Sec. 40, as it may be amended, and is payable to the Town of Shirley. The application must be filed concurrently with applications for all other variances and approvals required by the Zoning Bylaw, the Subdivision Control Law, local Board of Health Regulations or any other bylaw or regulations relevant to the work. The written application shall include such plans as may be necessary to describe such proposed activity and its effect on the environment. No filing fee is required when a department or officer of the Town of Shirley files an application for the Town.

- 2.2. Any person who desires a determination as to whether this Bylaw applies to land or work which may affect an Area Subject to Protection may submit a Request for Determination of Applicability to the Commission. Requests for Determination shall be accompanied by a filing fee specified within the regulations of the Commission. This fee is in addition to that required by the Wetlands Protection Act, Mass. Gen. Laws Ch. 131, Sec. 40, or as it may be amended. The Request for Determination application may be identical in form to a Request for Determination filed pursuant to Mass. Gen. Laws Ch. 131, Sec. 40. If the person making the Request for Determination is not the owner, the applicant shall send a copy of the Request for Determination by certified mail (return receipt requested) to the owner.
- 2.3. Deleted June 10, 1996
- 2.4. Each Notice of Intent or Request for Determination filed shall be assigned a unique identification number (hereinafter, File Number) to facilitate record keeping by the Commission. Said File Number may be identical to that assigned by the Massachusetts Department of Environmental Protection.
- 2.5. Any person filing a Notice of Intent or a Request for Determination with the Commission shall give at the same time written notice thereof, by certified mail (return receipt requested) or hand delivery to the owner and all abutters at their mailing addresses shown on the most recent town assessor's records.
- 2.6. In addition to any filing fee imposed by this Bylaw, the applicant shall reimburse the reasonable costs and expenses borne by the Commission for specific expert engineering and consulting services deemed necessary by the Commission, provided that the scope of the application meets the criteria set forth in Section 2.7 of this Bylaw. The amount of the reimbursement fee shall be based on the standard set forth in Section 2.10 of this Bylaw.
- 2.7. The Commission is authorized to charge this site and/or design review reimbursement fee when the Commission determines that a Notice of Intent, Request for Determination, or Certificate of Compliance involves any of the following: 500 square feet or greater of alteration of Freshwater Wetlands; 50 linear feet or greater of alteration of a Bank, Stream or River; 500 square feet or greater of alteration of the Buffer Zone; alteration of greater than 500 square feet of Land Under Bodies of Water; discharge of any pollutants into surface or ground waters of any resource area under this Bylaw; or construction of a detention or retention basin or other drainage device.
- 2.8. Said specific expert engineering and consultant services, may include but are not limited to consultants overhead and office expenses required to process said Notices, Requests and Certificates; copying plans and technical submittals for further review; subcontracting for professional services; mileage; wetland survey and delineation; hydrogeologic and drainage analysis; purchase or borrowing of materials; wildlife habitat, rare species, shellfish and fisheries evaluation; and environmental or land use legal consultation.
- 2.9. Said reimbursement fee shall be paid by the applicant within thirty (30) calendar days of receipt of a written request from the Commission. Said payment may be required by the Commission at any point in the reviewing or - deliberating processes but not before the Commission has provided the applicant with a written estimate of the cost of the services to be provided. The fee shall be paid to the Town and deposited into a revolving fund established under Chapter 44, Section 53E1/2 of the General Laws, and shall be expended by the Commission for services approved by the Commission at a public meeting. The principal shall be expended by the Treasurer at the direction of the Commission for site and/or design review costs and expenses.
- 2.10. In setting the amount of said reimbursement fee, the Commission shall utilize the following standard: the fee shall equal the amount of the actual bills for all expenses incurred for the File Number that are submitted by an expert engineer or consultant.

3. Hearings and Meetings

- 3.1. For a Request for Determination, the Commission shall hold a public meeting within twenty-one (21) calendar days of its receipt. Notice of the time and place of the meeting shall be given by the Commission at the expense of the applicant, not less than five (5) days prior to the

meeting, by publication in a newspaper of general circulation (in Shirley) and by mailing a notice to the applicant and to the owner by certified mail (return receipt requested).

- 3.2. For a Notice of Intent, the Commission shall hold a public hearing within twenty-one (21) calendar days of its receipt. Notice of the time and place of the hearing shall be given by the Commission at the expense of the applicant, not less than five (5) days prior to the hearing, by publication in a newspaper of general circulation (in Shirley) and by mailing a notice to the [applicant and to the owner by certified mail (return receipt requested)].

Amended 6/11/96

- 3.3. A Public Hearing and Public Meetings may be continued as follows:

- 3.3.1. without the consent of the applicant to a date, announced at the hearing, within twenty-one (21) calendar days of receipt of the Notice of Intent;
- 3.3.2. with the consent of the applicant, to an agreed-upon date, which shall be announced at the hearing; or
- 3.3.3. with the consent of the applicant for a period not to exceed twenty-one (21) calendar days after the submission of a specified piece of information or the occurrence of a specified action. The continued hearing shall be publicized in accordance with Section 3.2 of this Bylaw.

4. Permits and Conditions

- 4.1. For Requests for Determination, the Commission shall issue a Determination of Applicability within twenty-one (21) calendar days of receipt of said application. If, after the public meeting, the Commission determines that the area is significant to the Interests Protected by this Bylaw, the Commission shall issue a positive determination and request that the applicant file a Notice of Intent. If the Commission determines that the area which is the subject of the application is NOT significant to the Interests Protected by this Bylaw, or that the proposed activity does not require the imposition of conditions, it shall issue a negative determination. When the person requesting a determination is other than the owner, notice of the determination shall be sent to the owner as well as to the requesting person by certified mail (return receipt requested).
- 4.2. For Notices of Intent, the Commission shall issue an Order of Conditions within twenty-one (21) calendar days of the close of the Public Hearing for said application. The Commission shall impose such conditions as will contribute to the protection of the Interests Protected by this Bylaw and all work shall be done in accordance with those conditions. [The Order shall prohibit any work or any portion thereof that cannot be conditioned to protect said interests. If the Commission finds that the information submitted is not sufficient to describe the site, the work or the effects of the work on the Interests Protected by this Bylaw, it may issue an Order prohibiting the work. The Order shall specify the information which is lacking and why it is necessary. [If the Commission makes a determination that the proposed activity does not require the imposition of such conditions,] the applicant shall be notified of the Commission's decision within twenty-one (21) days after said hearing. Such Order or Notification that the proposed activity does not require conditions shall be signed by the majority of the Conservation Commission and a copy thereof shall be sent forthwith to the applicant by certified mail (return receipt requested). An Order of Conditions shall be valid for three (3) years unless specifically stated otherwise. The Commission may renew an Order of Conditions for an additional period not to exceed three (3) years. If renewal of an Order of Conditions is requested, it must be received in writing by the Commission at least thirty (30) calendar days prior to the expiration date of the Order.
- 4.3. No work proposed in any application shall be undertaken until the Order of Conditions, with respect to such work issued by the Commission has been recorded in the Registry of Deeds or, if the land affected thereby be registered land, in the registry section of the Land Court for the district wherein the land lies, and until the holder of the order of Conditions certifies in writing to the Commission that the Order has been so recorded.

- 4.4. Within twenty-one (21) days of the receipt of a written request, by the applicant or the owner of the property, for a Certificate of Compliance with an Order of Conditions, the Commission shall grant such request if the activity, or portions thereof, complies with the Order of Conditions. If the Certificate of Compliance is denied, the commission shall issue a letter noting the reasons for denial. The certificate of Compliance shall state that the activity, or portions thereof, has been completed in accordance with such Order.
- 4.5. No conditions shall be imposed, nor shall any Determination be rendered by the Commission, in reference to this Bylaw, unless the Commission meets with a quorum present.

5. Exceptions

- 5.1. The provisions of this Bylaw shall not apply to work performed in the course of maintaining, repairing or replacing but not substantially changing or enlarging, an existing and lawfully located structure or facility used in the service of the public and used to provide electric, gas, water, telephone, telegraph and other telecommunication services.
- 5.2. The Notice of intent required in this Bylaw shall not apply to emergency projects necessary for the protection of the health or safety of the Commonwealth which are to be performed or which are ordered to be performed by an agency of the Commonwealth or a political subdivision thereof. An emergency project shall mean any project certified to be an emergency by the Commission. If the Commission fails to act favorably within twenty-four (24) hours of receipt of a request for certification of an emergency project, said project may be so certified by the Selectmen. In no case shall any removal, filling, dredging or alteration authorized by such certification extend beyond the time necessary to abate the emergency.
- 5.3. The provisions of this Bylaw shall not apply to any mosquito control work done under the provisions of Clause (36) of Sec. 5 of Ch. 40, of Ch. 252 or any special act; to the maintenance of drainage and flooding systems of cranberry bogs, to work performed for normal maintenance or improvement of land in agricultural use or in aquacultural use.
- 5.4. The provisions of this Bylaw shall not apply to maintenance dredging projects for which a license has been previously issued within ten (10) years by the Division of waterways of the Department of Environmental Protection. The procedures set forth in Mass. Gen. Laws Ch. 131, Sec. 40 for licensed maintenance dredging projects shall be utilized in administering this Bylaw.

6. Regulations

- 6.1. After due notice and public hearing, the Commission may promulgate rules and regulations, including a filing fee schedule, to effectuate the purposes of this Bylaw. Notice of the time and place of the hearing shall be given by the Conservation Commission not less than 14 days prior to the hearing by publishing in a newspaper of general circulation (in Shirley) and by posting at town hall. Failure by the, Commission to promulgate such rules and regulations or a legal declaration of their invalidity by a court of law shall not act to suspend or invalidate the effect of this Bylaw.

7. General Provisions, Presumptions and Performance Standards

- 7.1. The provisions set forth in 310 CMR 10.03(1) through 10.03(6) as defined on January 1, 1994, and 310 CMR 10.51 through 10.60 as defined on January 1, 1994, shall be used for the interpretation and implementation of this Bylaw except in the event of a conflict with other provisions of this Bylaw, in which case the other provisions of this Bylaw shall take precedence.

8. Severability

- 8.1. The invalidity of any provision or feature of this Bylaw shall not affect the validity of any other provision or feature not manifestly inseparable therefrom.

9. Appeals

- 9.1. During an appeal of a decision of the Commission, the findings of a concurrent Massachusetts Department of Environmental Protection review under Mass. Gen. Laws Ch. 131, Sec. 40, shall be presumed correct except in those areas in which the wetlands protection requirements of this Bylaw specifically exceeds Mass. Gen. Laws Ch. 131, Sec. 40.

10. Enforcement

- 10.1. The filing of a Notice or Request shall constitute the consent of the owner and the grant of authority for the Commission, its agents, officers, and employees to enter upon privately owned land for the purpose of performing their duties under this Bylaw, and to make or cause to be made such examinations, surveys or sampling as the Commission deems necessary.
- 10.2. The Commission shall have the authority and duty to enforce this Bylaw, its regulations, and Order of Conditions issued hereunder by Enforcement orders and civil and criminal court actions.
- 10.3. When the Commission determines that violation of this Bylaw has occurred, it may request the Board of Selectmen and the Town Counsel to take legal action for enforcement under civil law. In addition, the Commission may request the Chief of Police or other authorities to take legal action for enforcement under criminal law.
- 10.4. Municipal boards and officers, including any police officer or other officer having police powers, shall have authority to assist the Commission in enforcement.
- 10.5. Any person who violates any provision of this Bylaw, may be punished by a fine of not more than three hundred dollars (\$300.00) per offense. Each day or portion thereof during which a violation continues shall constitute a Separate offense, and each provision of the Bylaw, regulations, or Order of Conditions violated shall constitute a separate offense.
- 10.6. In the alternative to criminal prosecution, the Com Commission may elect to utilize the non-criminal disposition procedure set forth in Mass. Gen. Laws Ch. 40, Sec. 21D, in which case the penalty shall be as follows:

10.6.1.	First offense:	\$ 25.00
10.6.2.	Second offense:	100.00
10.6.3.	Third and subsequent offenses:	300.00
- 10.7. No person shall remove, fill, dredge or alter any Area Subject to Protection under this Bylaw without the required authorization, or cause, suffer or allow such activity, or leave in place unauthorized fill, or otherwise fail to restore illegally altered land to its original condition, or fail to comply with an Enforcement Order issued pursuant to this Bylaw. Each day such violation continues constitutes a separate offense except that any person who fails to remove unauthorized fill or otherwise fails to restore illegally altered land to its original condition after giving written notification of said violation to the Commission, shall not be subject to additional penalties unless said person thereafter fails to comply with an Enforcement Order or Order of Conditions.
- 10.8. Any person who purchases, inherits or otherwise acquires real estate upon which work has been done in violation of the provisions of this Bylaw or in violation of any Order issued under this Bylaw shall forthwith comply with any such Order or restore such real estate to its condition prior to any such violation; provided, however, that no action, civil or criminal, shall be brought against such person unless such action is commenced within three (3) years following the recording of the deed or the date of the death by which such real estate was acquired by such person.